

owner will have a right to compensation when his property is not actually taken, but merely damaged, as the General Assembly defines damages. The General Assembly may define damage as being a broad right. They may decide to define it as a right the same as it is defined by the decisions of the courts, but they may also define it in a very limited way and could define it really as being no broader than the taking of property.

Now, if I misconstrue the amendment, I hope the Chairman will respond. I do believe, if I interpret the amendment correctly, that it gives to the General Assembly in effect the right to remove the word "damaged" from the constitution.

I do not mean that literally. Obviously, they cannot do that, but they can define "damaged" in such a limited way that the right which the Committee intends to give will be absolutely worthless, and if I am correct, then I am disturbed by the Chairman's acceptance of this amendment.

THE CHAIRMAN: Does any other delegate desire to speak on the amendment?

Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman, the sponsors of this amendment agree substantially with Delegate Bamberger. This gives the General Assembly the power to circumscribe, as he puts it, this right to damages and that is the purpose of the amendment. We are fearful that, without this amendment, the floodgates will be opened; we will be in an uncharted field. There is no law in the State of Maryland on this matter. Up to this time, damage to property where there is no taking has not been compensable, and if we are going to shift gears in this way, we think that the General Assembly should sit down and lay down the guidelines. I think we have to have a little fight in the General Assembly to legislate, and that is all this amendment does.

THE CHAIRMAN: Does any other delegate desire to speak in opposition of the amendment?

Delegate Clagett.

DELEGATE CLAGETT: Mr. Chairman, I share with Delegate Bamberger the concern about the Chairman of the Committee accepting this amendment in the language in which we have it before us because as I read that language I interpret it to mean that the General Assembly, could exclude the extension of damages which I believe

are contemplated here in section 9, and on that basis, retain and keep the existing compensation exactly as is, which certainly is not the intent of the Committee, and the intent of section 9 as it is presently written.

One reason why this language should be opposed, which I was intending to suggest to Delegate Kiefer, is that in the interim period between the effective date of the constitution and action by the General Assembly, there is no question about the fact that the courts would interpret the word "damage," and would give guidelines along which the General Assembly could and in all probability would act. But with these words, as presently before us in this amendment, where the exclusive right and mandate to define the word "damage" is left to the General Assembly, it means only that its interpretation and definition will be applicable and in that way the General Assembly can nullify the very right which the Committee is seeking to give.

THE CHAIRMAN: Delegate Bard.

DELEGATE BARD: Mr. Chairman, I had not planned to speak on this point but I am afraid I have to.

I had started earlier by saying that this amendment came into being when two individuals who split up on two ends of a pole the other day in connection with this point, gathered in connection with their mutual concern. There was a concern that perhaps this whole thing had not been thought through in terms of its end. I for one believed that the State had responsibilities in connection with damage but I did think that within the memorandum the Majority Report had indicated that there were words that were terribly important, namely, that the pleasure and nature of compensable damages are matters properly left to the legislature. This is page 28 of the Majority Report Memorandum.

The intent had been cleared, they did add, in the courts. New York State believed this whole concept was so important that within its statement read the following: "Private property shall not be taken or damaged as such latter term is defined by law for public use or purpose without just and timely compensation."

In other words, they believed that you ought not leave this to the memorandum. The Majority Report has not changed its opinion by agreeing with our view. It is merely saying the taking out of the memorandum and placing it into the constitution proper is highlighting that concern which some of us have.